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BY HAND

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW, Room TWB204
Washington, D.C. 20554

Re: **CS Docket No. 00-96**
Reply Comments of Mid-State Television, Inc.

Dear Ms. Salas:

Transmitted herewith on behalf of Mid-State Television, Inc., are an original and four copies of its Reply Comments in CS Docket 00-96.

Please contact me if there are any questions regarding this matter.

Very truly yours,



Paul J. Feldman
Counsel for
Mid-State Television, Inc.

PJF:jpg
Enclosure

cc: Mr. Gunther Meisse
Vincent J. Curtis, Jr. Esquire

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OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Satellite Home)	CS Docket No. 00-96
Viewer Improvement Act of 1999)	
)	
Broadcast Signal Carriage Issues)	

REPLY COMMENTS OF MID-STATE TELEVISION, INC.

Mid-State Television, Inc., licensee of Station WMFD(TV), Mansfield, Ohio, ("Mid-State"), by its attorneys, hereby submits its reply comments in response to the Commission's June 9, 2000 Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding. In these reply comments, Mid-State addresses the comments opposing the implementation of a mechanism to modify "local markets" for the purposes of the carriage obligations set forth in Section 338 of the Communications Act.

I. Introduction

In its initial comments, Mid-State noted that its Station WMFD is an independent commercial station located on the edge of three different television designated market areas ("DMAs"). Because Mansfield and the other communities in the Station's service area are all a significant distance from the larger communities of license that are at the core of the applicable DMAs, Mansfield and nearby communities do not receive much locally-oriented programming for those distant stations. Station WMFD does, however,

fill in this gap by providing substantial amounts of local news, weather and sports programming.

Mid-State's initial comments also noted that while Station WMFD has a strong over-the-air signal covering its service area, the fact of the matter is that the majority of the viewers in the WMFD service area (like viewers in most markets) receive their television service through cable TV, rather than off the air. However, a station's cable TV must carry rights are primarily determined by the DMA of its city of license, rather than by its over-the-air service area, and as a result, stations like WMFD, whose service areas cover multiple DMAs, can be denied substantial portions of the viewers in their service areas. Without access to such viewers, stations lose a substantial portion of their economic viability, and viewers lose access to locally oriented programming.

Mid-State also noted that the FCC's cable-TV market modification mechanism has been critical to allowing viewers access to the WMFD signal, and similarly critical to the economic stability of the Station. Such economic stability has allowed the Station to provide high quality programming for free over the air to viewers who are able to receive the signal in that manner. However, as DBS satellite service continues to increase its market share *vis a vis* cable TV, the Commission must recognize the growing importance of carriage on satellite services to the healthy maintenance of local television stations. Key to that survival is creating appropriate and realistic satellite TV markets.

II. Implementing a Market Modification Mechanism is Necessary to Promote Congress' Goal of Protecting Free Over-the-Air Television Service, and Placing Satellite and Cable Operators on Equal Terms.

In its initial comments, Mid-State demonstrated that implementation of a market modification policy for satellite TV carriage is not only good policy, but necessary to promote Congress' goal of protecting free over-the-air television service, and placing cable-TV and satellite operators on reasonably equal regulatory terms. Several parties filed comments urging the Commission not to implement such a market modification mechanism for satellite TV markets. The arguments made in those comments are flawed, however, and do not provide a basis for failure to implement a market modification mechanism.

The comments of DIRECTV, Inc. are representative of those made by satellite operators. DIRECTV asserts that because Section 338(h)(3) of the Act defines the term "local market" as having the meaning given in Section 122(j) of Title 17 of the U.S. Code, which does not specifically provide for a market modification mechanism, the Commission lacks the authority to enact such a mechanism. DIRECTV Comments at pages 14-15. Such an argument is not conclusive, however: the mere lack of language specifically authorizing market modification is not the equivalent of a statutory prohibition against enacting such a mechanism. And lacking such a prohibition, the Commission has the authority to enact such mechanisms as a means of furthering related goals in the SHVIA. See Comments of Mid-State at pages 4-6.

DIRECTV next asserts that if such a mechanism were created, an internal contradiction would be result: the Commission's action modifying the market would have no corresponding effect on the market definition for purposes of the compulsory copyright license provided in 17 U.S.C. § 122(j), and as a result, satellite carriers would lack the copyright license to carry a station in the community added by market modification. See Comments of DIRECTV at page 16. But this alleged theoretical contradiction requires, among other things, that the Copyright Office not enact regulations parallel to and supplementing those of the Commission. There is no evidence that the Copyright Office will not take such action, if the Commission enacts a market modification mechanism.

Having argued vigorously for six pages in its Comments that the SHVIA provides no authority to modify satellite must-carry markets, other than through recognition of changes independently made by Nielsen in its designation of markets,¹ DIRECTV then turns its own argument on its head, in order to carve out an exception in its favor that would only allow use of market modification to remove stations from satellite must-carry markets. See Comments of DIRECTV at page 21. Mid-State recognizes that if the Commission were to enact a market modification procedure, the possibility exists that it could be used to delete stations, as well as to add them, to certain markets. Such an approach could be consistent with SHVIA. However, DIRECTV's proposal, that a market modification procedure be used only to delete stations from their existing

¹ See, e.g., DIRECTV Comments at page 15 ("Thus, the text of the SHVIA specifically relies on Nielsen as the exclusive mechanism to define and modify market boundaries for purposes of the compulsory copyright license as well as for purposes of defining the carriage obligations of satellite carriers.")(emphasis added).

markets, is clearly inconsistent with the purpose of the SHVIA. DIRECTV recognizes in its own Comments that a primary intent of SHVIA was to “ensure that subscribers to satellite carriers’ services could ‘obtain their local television stations without fear that their local broadcast service may be turned off at a future date.’”² Yet DIRECTV’s proposal is flatly inconsistent with that Congressional intent.

DIRECTV’s deletion-only mechanism would also directly contradict another obvious purpose of the SHVIA: strengthening broadcast TV stations so as to enhance free over-the-air service, especially from independent stations:

The proposed provisions are intended to preserve free television for those not served by satellite or cable systems and to promote widespread dissemination of information from a multiplicity of sources. The Conference Committee is concerned that, absent must-carry obligations, satellite carriers would carry the major network affiliates and few other signals. Non-carried stations would face the same loss of viewership Congress previously found with respect to cable noncarriage.³

DIRECTV’s deletion-only mechanism would also contradict Congress’ goal of placing satellite and cable TV operators on reasonably equal terms. That goal is evident by review of the Conference Report, which states that the carriage/licensing requirements of SHVIA “place satellite carrier [sic] in a comparable position to cable systems, competing for the same customers.”⁴

DIRECTV also advocates against a market modification mechanism that adds communities to a station’s market, due to alleged difficulties with accommodating such

² DIRECTV Comments at page 17, *citing* Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong. 93 (“Conference Report”).

³ Conference Report, 145 Cong. Rec. at H11795 (daily ed. Nov. 9, 1999).

⁴ *Id.*

an approach with the pre-established satellite spot beams. Comments at pages 22-23. However, the problematic scenarios spelled out by DIRECTV seem unlikely: DIRECTV admits that in “many cases” a spot beam will encompass several DMA markets (*id.*). In such a case, the addition of a community to a station’s market, when the existing market for the community and the new market are in neighboring DMAs, is unlikely to cause technical problems. And while DIRECTV notes possible problems with the Denver market, the vast majority of TV markets are not nearly so large and do not contain non-contiguous segments. In any case, in the limited circumstance where it would be technically impossible for an existing satellite to include an additional community in its spot beam, the Commission could certainly take this into account in a market modification proceeding, in a manner similar to consideration of cable TV facilities in cable TV modification proceedings.

Lastly, Mid-State notes that it appears that one broadcast commenter opposed the enactment of a market modification mechanism. See Comments of Paxson Communications Corporation at pages 6-8. However, it should be noted that while PCC is the licensee of many stations, it is also the operator of a TV network (PAXTV), and another major network (NBC) holds a 32 percent equity interest in PCC. The interests of a network are not always identical with those of individual stations affiliated with that network. Such is the case in this proceeding, where a network might not want one affiliate threatening audience share of a neighboring affiliate, regardless of the public interest benefits for viewers of a new source of local programming.


III. Conclusion

The Commission should implement a mechanism to modify "local markets" for the purposes of the carriage obligations set forth in Section 338 of the Communications Act. Such a market modification mechanism would promote Congress' goals of placing cable and satellite operators on an equal footing, and protecting and fostering free local over-the-air television stations.

WHEREFORE, Mid-State Television, Inc. requests that the Commission enact rules as set forth in its initial comments.

Respectfully submitted,

MID-STATE TELEVISION, INC.

A handwritten signature in black ink, appearing to read "Paul J. Feldman", written over a horizontal line.

Vincent J. Curtis, Jr.
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July 28, 2000

CERTIFICATE OF SERVICE

I, Joan P. George, a secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that a true copy of the foregoing *Reply Comments of Mid-State Television, Inc.* was sent this 28th day of July, 2000, via United States First Class Mail, postage prepaid, to the following:

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